

**HAJI WAN HABIB SYED MAHMUD v.
DATUK PATINGGI HAJI ABDUL TAIB
MAHMUD & ANOR.**

[S.C. (Abdul Hamid Ag. L.P., Wan Suleiman Ag. C.J.
(Malaya) & Hashim Yeop A. Sani S.C.J.) April 7, 1986]

[Kuala Lumpur — Supreme Court Civil Appeal No. 43
of 1986]

*Practice and Procedure — Application for interlocutory
injunction refused — Discretion of judge.*

In this case the appellant applied for an interlocutory
injunction but this was refused. The learned trial judge
made the following findings —

- (1) that a resolution suspending the appellant was passed
in his absence. He was orally informed. A letter
followed on 26.11.85;
- (2) that the appellant was not notified of Majlis Kerja
Tertinggi's intention to resolve his suspension;
- (3) that the appellant was not given any notice specifically
of what he was accused of. It was only the appellant's
belief that Majlis Kerja Tertinggi was going to discuss
his conduct when he was asked to leave the meeting;
and
- (4) that the appellant was not given the opportunity of
being heard before the resolution was made to suspend
him.

The learned trial judge refused the interlocutory injunction
as he stated that the suspension was only for six months
and when the application was heard before him three
months had lapsed. The learned judge also relied on the
long delay of two months before the appellant sought relief
and this delay the judge held to be unreasonable and
unexplained by the appellant.

Held: (1) in this case there was a *prima facie* case of
natural justice having been denied to the appellant. The
claim was not frivolous and there was a serious question to
be tried. There is no distinction in law between expulsion
and suspension;

(2) that alone is not sufficient for the appellant to
obtain the interlocutory injunction as of right. In this case
the trial judge considered that the balance of convenience
did not lie in favour of the appellant;

(3) discretionary remedies are exceptional in their
nature and should not be made available to those who
sleep on their rights;

(4) the grant of the interlocutory injunction was a
matter for the exercise of discretion by the learned judge
and in this case his decision should not be interfered with.

Cases referred to:

- (1) *American Cyanamid Corpn. v. Ethicon Ltd.*
[1975] 1 All E.R. 504.
- (2) *Kok Wee Kiat v. Chong Hon Nyan* [1985] 2
M.L.J. 130.
- (3) *Chong Kok Lim & Ors. v. Yong Su Hian* [1979]
2 M.L.J. 11.
- (4) *John v. Rees* [1969] 2 All E.R. 274, 299, 305.

- A (5) *R. v. Senate of University of Aston* [1969] 2
All E.R. 964, 979.
- (6) *Redland Bricks Ltd. v. Morris* [1970] A.C. 652,
665.
- (7) *S.F. International Ltd. v. Trans-con Engineering
Sdn. Bhd.* [1985] 1 M.L.J. 62.
- (8) *Wah Loong (Jelapang) Tin Mine Sdn. Bhd. v.
Chia Ngen Yiok* [1975] 2 M.L.J. 109.
- B (9) *Sivaperuman v. Heah Seok Yeong Realty Sdn.
Bhd.* [1979] 1 M.L.J. 150.
- (10) *Evercrisp Snack Products Sdn. Bhd. v. Sweeties
Food Industries Sdn. Bhd.* [1980] 2 M.L.J. 297.
- (11) *Tavener Rutledge Ltd. v. Specters Ltd.* [1957]
R.P.C. 498.
- C (12) *Glasgow Navigation Co. v. Iron Ore Co.* [1910]
A.C. 293.
- (13) *Tindell v. Wright* (1922) 38 T.L.R. 521.
- (14) *Ng Yik Seng & Anor. v. Perwira Habib Bank
Malaysia* [1980] 2 M.L.J. 83, 84.
- (15) *Webster v. Bakewell R.D.C. (No. 2)* (1916) 115
L.T. 678.
- D (16) *V. Govindaraj v. President Malaysian Indian
Congress & Anor.* [1984] 1 M.L.J. 190.
- (17) *Hadmor Productions Ltd. & Ors. v. Hamilton &
Anor.* [1983] 1 A.C. 191.
- (18) *Lawlor v. Union of Post Office* [1965] 1 All
E.R. 353.
- (19) *Stevenson v. United Road Transport Union*
[1977] 2 All E.R. 941.

E HIGH COURT (In Chambers, January 24 & Feb-
ruary 1, 1986).

Richard Wong Ho Leng for the applicant.

K.J. Foo for the 1st respondent.

J.C. Fong for the 2nd respondent.

F *Cur. Adv. Vult.*

Abu Mansor J.: At the same time as he filed
his Writ dated January 13, 1986 seeking a decla-
ration that the resolution of November 15, 1985
("the said resolution") of the Majlis Kerja Ter-
tinggi ("MKT") of Parti Pesaka Bumiputera Bersa-
tu ("PPBB") purporting to suspend the member-
ship of the applicant as the Vice-President of
PPBB was null and void and also praying for inter-
locutory injunction restraining the MKT from
enforcing it, the applicant also filed this Summons-
in-Chambers dated January 13, 1986 praying for
an interlocutory injunction restraining the MKT of
PPBB and each and every member thereof from
acting or enforcing the said resolution or from
interfering with the enjoyment of the right or
benefit of the applicant's membership as a Vice-
President or from attending any meeting of the
MKT of PPBB until further order. The applicant
enumerated grounds (1) to (6) in his application
alleging that the said resolution being invalid
contrary to natural justice, invalid due to proce-
dural defect, the said resolution stripped the appli-
cant's right to membership as Vice-President of

MKT, the said resolution caused irreparable harm and damage to him, and there is a serious question to be tried at the hearing and the matter is one of extreme urgency.

The application was first fixed for argument in Chambers on January 16, 1986. It had to be postponed as only the 1st defendant was served. It was again fixed for argument in Chambers for January 24, 1986 and on that day the Court heard arguments.

In support of his application the applicant swore an affidavit on January 13, 1986 and the 1st and 2nd defendants also each swore an affidavit-in-reply to the one filed by the applicant. Except for some minor details due to the difference in emphasis the facts as set out in the applicant's affidavit are not disputed by both defendants. Though absent from the applicant's affidavit it is also not disputed that when the said resolution was passed the 1st defendant was not in the Chair. The facts were on November 4, 1985 a notice was sent by the Executive Secretary of PPBB calling for the 14th Meeting of the MKT of the PPBB on November 15, 1985 at 8.00 p.m. at the place stated in the notice. The meeting on November 15, 1985 proceeded according to the Agenda but when members were about to discuss the last item, the 1st named defendant requested applicant to leave the meeting room to facilitate the members to discuss certain allegations concerning the applicant's conduct relating to the Maradong Branch elections. Applicant left and the 1st defendant also left the meeting as he felt he was the person who relayed the letter of complaint pertaining to the applicant's alleged involvement in the said elections. The meeting proceeded on in that fashion.

It is not disputed that in the absence of the applicant the MKT passed a resolution suspending the applicant from membership of the MKT and being a Vice President for a period of six months. He was orally informed of the decision on that day and on November 26, 1985 he received a letter informing him of the suspension.

It was also common ground that applicant was at no time notified of the MKT's intention to resolve his suspension and not disputed too that the applicant was not given any notice of what specifically he was actually accused of though it was clear he knew the MKT was going to discuss his conduct before he left the meeting. It was also not disputed that he was never given any opportunity of being heard before

A the passing of the said resolution.

The applicant also stated that since the resolution he had been unjustly and wrongfully deprived and he would be prevented from attending any meeting of the MKT. He also says that it is necessary that his rights be preserved.

B He also says that according to the Party constitution the next meeting of the MKT will be held on or before February 15, 1986 though when his counsel was asked to confirm this fact he could not confirm the reliability of this statement and he alleged that the resolution will cause irreparable harm and damage to his reputation.

C The applicant lastly contended that there is a serious question to be tried at the hearing and he prays for the relief of interlocutory injunction.

D Counsel for the applicant urged on the Court that the principle to be applied in considering to grant or otherwise is whether there is a serious question to be tried in the sense that the claim is not frivolous and it is to preserve proprietary right or to keep the matters in *status quo*. He cited *American Cyanamid Corpn. v. Ethicon Ltd.*⁽¹⁾ adding that this principle was applied in *Kok Wee Kiat v. Chong Hon Nyan*⁽²⁾ where injunction was granted to restrain the MCA from holding Divisional Assembly and *Chong Kok Lim & Ors. v. Yong Su Hian*⁽³⁾ where the Court granted an injunction restraining the Executive Committee of the Perak MCA from enforcing a resolution of April 5, 1976 expelling him from being a member of the Perak MCA.

E The applicant's counsel then submitted that the MKT had breached a rule of natural justice in resolving that the applicant be suspended for six months from November 15, 1985. He alleged and not disputed by the defendants that there was no notice of the intention to propose a resolution to suspend the applicant. As for his authority he cited *John v. Rees*⁽⁴⁾ and not disputed too the applicant was never given notice of what specifically he was accused of and he cited *Chong Kok Lim v. Yong Su Hian* and *De Smith's Judicial Review of Administrative Action*, 4th Edn. He submitted that having regard to these authorities the resolution of November 15, 1985 should be declared by the Court to be invalid.

I On behalf of the defendants it was contended and that the applicant did not demand to be heard even though he knew the complaints involved him

before he left the meeting. He was told of the MKT's decision to suspend the applicant. The defendants also contended that the applicant never appealed to the party against the suspension. The defendants say the Vice President does not carry any benefit or privileges. Though it was not in the defendants' affidavit but in argument the defendants urged on the Court to refuse the granting of this application as there was a delay of nearly two months in bringing this application and nowhere did the applicant explain the delay. The defendants cited *R. v. Senate of University of Aston*⁽⁵⁾ where a discretionary power was not exercised where the application was affected by delay.

It was plain from what transpired that the MKT's decision to suspend him was taken in the absence of the applicant. Without going into its merit and not to prejudge the issue to the Court there appears to be a breach of the rule of natural justice in the MKT's resolution of November 15, 1985 suspending the applicant from membership of the MKT for six months and from being a Vice President of PPBB. It is so on the authority of *John v. Rees above*, at page 305 that the rule of natural justice applies to suspension equally as it applies to expulsion. But there I must stop short for I must remind myself I am not hearing the main suit seeking a declaration. The application in this instance is for an interlocutory injunction.

Notwithstanding this breach of the rule of natural justice should the Court grant the interlocutory injunction prayed for? Is this application granted as of right? It was not sufficiently stressed by counsel for applicant or for defendants that in all cases cited by the parties the applicant therein was inviting the exercise by the Court of the Court's discretionary powers and each case was decided on its own particular facts and merits. In *Redland Bricks Ltd. v. Morris*⁽⁶⁾ we are told other than confining oneself to general principles the relevant cases at most can be used only for general guidance. It follows also therefore that the present case falls to be decided on its own merits. The Court therefore considered that the granting of the injunction was an exercise of discretionary power — *S.F. International Ltd. v. Trancon Engineering Sdn. Bhd.*⁽⁷⁾ — but like any discretionary power it must be judicially exercised.

As far as interlocutory mandatory injunction goes it was said in *Wah Loong (Jelapang) Tin Mine Sdn. Bhd. v. Chia Ngen Yiok*⁽⁸⁾ that such an injunction is never granted before a trial save in exceptional and extremely rare cases. In *Siva-*

peruman v. Heah Seok Yeong Realty Sdn. Bhd.⁽⁹⁾ the Federal Court spelt it out in the same vein again and it held the Court is not precluded from granting one which has an effect of virtually giving to that party the full relief sought to be secured at the trial. Was there such exceptional circumstance in our present case?

Applying the principles in the *Cynamid case, supra*, the Court anxiously considered whether there is a serious question to be tried. The Court is mindful of the declaration which the applicant is seeking, the matter which eventually will come for hearing. It also considered that in order to get an interlocutory injunction it is not necessary to satisfy the Court that he would get a permanent injunction restraining the MKT of PPBB which suspended the membership of the applicant as a Vice President. Apart from that, special to the facts of the present application, would the Court grant the application in the light of the fact that after three months or so from today the applicant's membership will be restored to him by effluxion of time. When that happens the question is whether then the so-called serious question to be tried will remain to be so. This consideration is most important in view of the authorities that I cite later. This issue has been made even more crucial when the applicant had hesitated and only made an attempt to complain to the Courts of his suspension by filing the Writ and making this application on January 13, 1986 taking almost two months to act, bearing in mind the suspension is only six months, in three months' time or so he would be restored to his former position even without the Court's aid. Further in the normal process and the usual period of time taken in any civil proceedings allowing for filing of interrogatories, statement of defence and of reply and seeking the Court's orders in summons for directions and getting and preparing the bundle of documents and trying to get a hearing date, the Court takes judicial notice that the hearing of this matter will only come up well after three months when the applicant would well have been and truly reinstated. When that happens the issue whether that said resolution is valid will and if ever it comes for trial become mere academic.

The delay of nearly two months on the applicant's part in bringing this action I hold to be fatal. The Court held this is even more so when the suspension is only for six months and in a matter of three months his *status quo* will be restored. The Court takes the view that where the applicant had delayed and he, in a matter of months will

automatically have that remedy without the Court's aid, he then has no need to seek it from the Court. In *R. v. Senate of University of Aston (supra)*, Blain J., in refusing the exercise of a discretionary power affected by delay said:

"This court does not lightly exercise its discretion not only is real injustice a necessary ingredient before any application is granted, but it should, in my view be granted only where diligence is shown by an applicant in real need of remedy.

In *Evercrisp Snack Products Sdn. Bhd. v. Sweeties Food Industries Sdn. Bhd.*⁽¹⁰⁾ Hashim Yeop Sani, J., as he then was, refused to grant an interlocutory injunction where the applicant had not explained his unreasonable delay in his claim for interim relief. Likewise in the cited case therein of *Tavener Rutledge Ltd. v. Specters Ltd.*⁽¹¹⁾ though they be trade mark cases, a delay of seven weeks which had not been explained in the plaintiff's affidavit was held to be fatal.

The second consideration is the balance of convenience in granting or refusing. In this the Court considered whether the plaintiff, if he succeeds, would adequately be compensated by damages for the loss sustained between application and trial. If he would then, no injunction should be granted. Bearing in mind that the suspension would end in six months' time with about three months or so to go when the applicant will automatically be reinstated, the Court is of the view that whatever loss he suffered up to trial, if even it comes to that, would be a loss of reputation as the applicant claimed and a loss of the chance to vote until before the six months' period expired which to the Court's view can be compensated in damages for which the applicant has not, surprisingly, made claim in which case no injunction would be normally granted. Assuming the Court is in error in this, then it also considered that if the plaintiff fails can the defendants be adequately compensated in damages and the answer is the defendants would not be adequately compensated. In a six months' suspension, the applicant having taken almost two months to seek this remedy, and in three months the applicant would be restored his full rights, the granting of the applicant's application would give him undue advantage with very little time left for the defendants to make application to correct matters if they want to. As submitted I agree it will cause an irreparable slur on the MKT. As for the *status quo* as I had observed the applicant's membership of MKT would be restored in a matter of months. All that being evenly balanced what decided the granting or

A refusing would be the question to be tried. On this the Court had already considered that when the suspension is up and it would be up even before the matter is quite ready for trial as I have already said by that time the issue would only be academic in which the Court will refuse to adjudicate on the principles in *Glasgow Navigation Co. v. Iron Ore Co.*⁽¹²⁾ and *Tindell v. Wright*⁽¹³⁾ where the Court would not decide in such issues even though it is a matter of public importance in which a government department of the day desires guidance. In *Ng Yik Seng & Anor. v. Perwira Habib Bank Malaysia*⁽¹⁴⁾ Chang Min Tat F.J. citing with approval *Webster v. Bakewell R.D.C. (No. 2)*⁽¹⁵⁾ commented on the futility and an abuse of Court's process when chargee bank could realise the overdraft by sale of a secured legal charge which by lapse of time was worth more than the amount of the overdraft and the action against the guarantors may well be a useless piece of litigation which the Court may well dismiss or stay. On the balance of convenience therefore in our present case the Court will not grant the interlocutory injunction sought as the applicant would already have been reinstated as Vice President by then. What is said here also disposes of the applicant's prayer that the interlocutory injunction is required as a matter of urgency. The Court failed to find one when his suspension ends in three months' time.

F In a similar case of suspension of membership of a political party (but for twelve months) my brother, Dr. Zakaria Yatim J., had the occasion to consider in *V. Govindaraj v. President Malaysian Indian Congress & Anor.*⁽¹⁶⁾ whether the plaintiff therein should be granted an injunction to restrain the President and the MIC from interfering in the plaintiff's continued membership, privileges, positions held in the MIC. He declined to do so on the ground that it was improper to grant it as prayed as this would amount to interfering with the affairs of the MIC without valid reason. Likewise G in the present application the Court is in the dark as to the charges the MKT has against the applicant. Admittedly the procedure used in the suspension may be found to be wanting but the charges could well be genuine and still the applicant may have an answer or answers to them if he were asked. Above all the Court considered human magnanimity being what it is the applicant may well shake hands with the MKT members and decide to let bygone be bygone there would then be no necessity for any order of the Court and if it had issued it where would it be lying. I can neither find the exceptional circumstances

nor can I find the urgency that I need to grant it. A

In short, the sum total of my judgment is where in a six months' suspension and the applicant had waited for two months to complain to Court and such suspension would be restored to him in three months' time and thus maintaining the *status quo* a wait for three months more will do the applicant no harm and the Court will not lend its aid to hasten the restoration of that *status quo* when the applicant has himself been guilty of delay.

In exercise of my discretion I therefore refuse the applicant's application for an interlocutory injunction for reasons stated above.

The application is therefore dismissed. As I have decided on matters not in one party's affidavits and dealt with authorities not cited by parties I order each party to pay his own costs.

Application.

[The applicant appealed to the Supreme Court.]

SUPREME COURT.

Chong Siew Chiang (Richard Wong Ho Leng with him) for the appellant.

James Puthuchearry (Foo Kim Jiong (Miss) with him) for the 1st respondent.

J.C. Fong for the 2nd respondent.

Abdul Hamid Ag. L.P. (delivering oral Judgment of the Court): This is an appeal against an exercise of discretion of the Court below. The facts are not in dispute. Indeed in the grounds of judgment the learned Judge made the following findings:—

- (1) that a resolution suspending the appellant was passed in his absence. He was orally informed. A letter followed on 26.11.85;
- (2) that the appellant was not notified of Majlis Kerja Tertinggi's intention to resolve his suspension;
- (3) that the appellant was not given any notice specifically of what he was accused of. It was only the appellant's belief that Majlis Kerja Tertinggi was going to discuss his conduct when he was asked to leave the meeting; and
- (4) that the appellant was not given the opportunity of being heard before the resolution was made to suspend him.

However the learned Judge declined to grant the interlocutory injunction sought by the appellant on two grounds. The question we have to decide on appeal is whether the learned Judge had erred in law in so declining.

B The principles governing the exercise of discretion to grant or withhold an interlocutory injunction are well established. Injunction is pre-eminently a discretionary remedy. The discretion is to be exercised judicially. It is also well established that such an exercise of discretion will not be interfered with by an appellate court save in exceptional cases such as where the decision of the trial judge is shown to be based on erroneous assumptions of law or fact or where no reasonable explanation is given for the decision. It is not enough that the appellate court might have exercised the discretion differently. See *Equitable Remedies* by Spry, 3rd Edition and *Hadmor Productions Ltd. & Ors. v. Hamilton & Anor.*⁽¹⁷⁾ We might add that a decision will be set aside on appeal if the Court has failed to act in accordance with recognized principles.

E In this case it is quite clear from the affidavits that there is a *prima facie* case of natural justice having been denied to the appellant. In other words the claim was not frivolous or vexatious and that there is a serious question to be tried — see *American Cyanamid Co. v. Ethicon Ltd.*⁽¹⁾ It is also clear that in law there is no distinction between expulsion and suspension — see *John v. Rees*,⁽⁴⁾ *Lawlor v. Union of Post Office etc.*,⁽¹⁸⁾ and *Stevenson v. United Road Transport Union*.⁽¹⁹⁾ But that alone is not sufficient for the appellant to obtain the interlocutory injunction as of right. In this case the trial Judge considered that the balance of convenience did not lie in favour of the appellant.

H He summarised his judgment at page 20 of the record of appeal in that the suspension was only for six months and when the application was heard before him three months had lapsed. But it will appear that the trial Judge also relied on the long delay of two months before the appellant sought relief and this delay the Judge held to be unreasonable and unexplained by the appellant. Discretionary remedies are exceptional in their nature and shall not be made available to those who sleep on their rights. See *R. v. Senate of University of Aston*⁽⁵⁾ and *Evercrisp Snack Products Sdn. Bhd. v. Sweeties Food Industries Sdn. Bhd.*⁽¹⁰⁾

Thus there therefore are two factors which the

learned Judge considered. Firstly, the fact that half of the period of suspension had lapsed. Secondly, he found the delay of two months unreasonable and no explanation given. Relying on the principle which governs the approach to be taken by an appellate court in a matter of this nature, it is our view that the decision should not be interfered with and accordingly the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Siong & Co., K.J. Foo & Co.; Reddi & Co.*

CHAI CHOON HON v. KETUA POLIS DAERAH, KAMPAR AND GOVERNMENT OF MALAYSIA

[S.C. (Abdul Hamid Ag.L.P., Mohamed Azmi & Abdoolcader S.C.JJ.) March 13 & April 8, 1986]

[Pulau Pinang – Supreme Court Civil Appeal No. 11 of 1985]

Administrative Law – Licence to hold dinner and lion dance in public place – Imposition of conditions for licence – Whether conditions reasonable – Restriction on number of speakers – Condition forbidding speeches to touch on political issues – Police Act, 1967, s. 27(2) – Federal Constitution, art. 10(1)(a).

Constitutional Law – Freedom of speech – Federal Constitution, art. 10(1)(a).

In this case the appellant had applied for a licence to hold a DAP solidarity dinner and lion dance in a public place. The first respondent issued the licence but imposed seven conditions, two of which the appellant sought to impugn on the ground that they were unconstitutional, null and void and of no effect in that they abridged the right of freedom of speech guaranteed under article 10(1)(a) of the Federal Constitution. One of the conditions restricted the number of speakers to seven only and part of the other forbade the speeches to touch on political issues. The learned trial judge held the latter condition pertaining to speeches touching on political issues to be an unreasonable restriction in violation of the right of freedom of speech but held the former restricting the number of speakers to be valid. The appellant appealed.

Held: there does not appear to have been any valid reason for the restriction imposed on the number of speakers within the time limit granted in the licence, that is from 5 p.m. to 11.30 p.m., and the particular condition was unreasonable in the circumstances as the police had the means to deal with any infringement of the time frame specified in the licence under the provisions of section 27 of the Police Act, 1967.

A Case referred to:

- (1) *Merdeka University Berhad v. Government of Malaysia* [1981] 2 M.L.J. 356, 360.

SUPREME COURT.

- B** *Karpal Singh* for the appellant.
T. Selventhiranathan (Senior Federal Counsel) for the respondents.

Cur. Adv. Vult.

- C** **Abdoolcader S.C.J.** (delivering the Judgment of the Court): The essential issue for determination in this appeal is the validity of a condition restricting the number of speakers at an assembly for which a licence was sought by the appellant from the first respondent as the licensing authority under the provisions of section 27(2) of the Police Act, 1967 ('the Act').

- D** Now for the background against which this point arises: The appellant as the Secretary of the Kampong Baru, Malim Nawar branch of the Democratic Action Party applied on August 3, 1984 to the first respondent under section 27(2) of the Act for a licence to hold a Democratic Action Party solidarity dinner and lion dance at the grounds of Tokong Lian Fah Meow from 5.00 p.m. to 11.30 p.m. on September 11, 1984. The first respondent issued the requisite licence but imposed
- E** 7 conditions, two of which (but partially in the case of one of them) the appellant seeks to impugn in the instant proceedings instituted by him for declarations to the effect that they are unconstitutional, null and void and of no effect in that they abridge the right of freedom of speech guaranteed
- F** under article 10(1)(a) of the Constitution of Malaysia. One of the conditions in question restricted the number of speakers at the dinner to 7 only and part of the other forbade the speeches to touch on political issues. Anuar J., after hearing evidence and submissions adjudged on December
- G** 13, 1984 the latter condition pertaining to speeches touching on political issues to be an unreasonable restriction in violation of the right of the freedom of speech but held the former restricting the number of speakers to be valid.

- H** Section 27(2) of the Act empowers the first respondent as the licensing authority to grant an application for a licence by any person intending to convene or collect any assembly or meeting or to form a procession in any public place if he is satisfied that the assembly, meeting or procession is not likely to be prejudicial to the interest of the